In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1160

CHARLES LUCAS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-6232

JEROME JIMINIZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the Southern District of New York, petitioners were convicted of having possessed cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). Petitioner Jiminez was sentenced to imprisonment for five years; petitioner Lucas was sentenced to imprisonment for eighteen months. The court of appeals affirmed *per curiam*.

Petitioners' only contention here is that 21 U.S.C. 841 (a)(1) is unconstitutional because it does not require proof of a nexus with interstate commerce. This question is akin to the one advanced unsuccessfully in *Perez* v. *United States*, 402 U.S. 146, where this Court reaffirmed prior rulings that the Commerce Clause can reach wholly intrastate activities where, as a class, such activities have a substantial effect upon interstate commerce. This is so whether or not an individual situation can be shown to bear such a connection. There can be little doubt that the statutory scheme which includes 21 U.S.C. 841 deals with matters having a profound effect on interstate commerce. This determination by Congress, reached after extensive examination into the vice of narcotics trafficking, has been codified in the form of explicit legislative findings. See 21 U.S.C. 801. In light of the rational basis for the particularized congressional findings, 21 U.S.C. 841 is clearly valid. The courts of appeals have uniformly reached this conclusion and this Court has denied further review of the issue. See, *e.g.*, *United States* v. *Lopez*, 459 F. 2d 949 (C.A. 5), certiorari denied *sub nom. Llerena* v. *United States*, 409 U.S. 878; *United States* v. *Rodriquez-Camacho*, 468 F. 2d 1220 (C.A. 9), certiorari denied March 19, 1973, No. 72-5946.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.